

HOUSE BILL NO. 64

INTRODUCED BY R. BROWN

BY REQUEST OF THE LEGISLATIVE COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR QUALIFICATIONS FOR MEDICAL MALPRACTICE EXPERT WITNESSES; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Medical malpractice expert witness qualifications.** (1) A person may not testify as an expert witness on issues relating to negligence and standards of care and practice in an action on a malpractice claim, as defined in 27-6-103, for or against a health care provider, as defined in 27-6-103, unless the person:

(a) is licensed as a health care provider in at least one state and ~~ordinarily~~ ROUTINELY treats OR HAS ROUTINELY TREATED WITHIN THE PREVIOUS 5 YEARS the diagnosis or condition or provides the type of treatment that is the subject matter of the malpractice claim or is OR WAS WITHIN THE PREVIOUS 5 YEARS an instructor of students in an accredited health professional school or accredited residency or clinical research program relating to the diagnosis or condition or the type of treatment that is the subject matter of the malpractice claim; and

(b) shows by competent evidence that, as a result of education, training, knowledge, and experience in the evaluation, diagnosis, or treatment of the disease or injury that is the subject matter of the malpractice claim against the health care provider, the person is thoroughly familiar with the standards of care and practice ~~in the same or a similar community~~ as they related to the act or omission that is the subject matter of the malpractice claim on the date of the incident upon which the malpractice claim is based.

(2) If the malpractice claim involves treatment that is recommended or provided by a physician as defined in 37-3-102, a person may not testify as an expert witness with respect to issues of negligence or standards of care and practice concerning the treatment unless the person is also a physician.

(3) A person qualified as an expert in one medical specialty or subspecialty is not qualified to testify with respect to a malpractice claim against a health care provider in another medical specialty or subspecialty unless; ~~in addition to a showing of substantial familiarity with applicable standards of care and practice in accordance~~

1 ~~with subsection (1)(b),~~ there is a showing that the standards of care and practice in the two specialty or
2 subspecialty fields are substantially similar. THIS SUBSECTION (3) DOES NOT APPLY IF THE SUBJECT MATTER OF THE
3 MALPRACTICE CLAIM AGAINST THE HEALTH CARE PROVIDER IS UNRELATED TO THE RELEVANT SPECIALTY OR
4 SUBSPECIALTY.

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6 NEW SECTION. SECTION 2. SAVING CLAUSE. [THIS ACT] DOES NOT AFFECT RIGHTS AND DUTIES THAT
7 MATURED, PENALTIES THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF THIS
8 ACT].

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10 NEW SECTION. SECTION 3. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 2005.

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12 NEW SECTION. Section 4. Applicability. [This act] applies to causes of action that arise after [the
13 effective date of this act].

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